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D2 Abatement, Inc. and Premier Environmental Solutions LLC, alter egos and District Council 1m, International Union of Painters and Allied Trades (IUPAT), AFL-CIO. Case 07-CA-133250

October 15, 2018

DECISION AND ORDER

BY MEMBERS MCFERRAN, KAPLAN, AND EMANUEL

The General Counsel seeks a default judgment in this case pursuant to the terms of an informal settlement agreement. Upon a charge filed by District Council 1M, International Union of Painters and Allied Trades, AFL-CIO (the Union), on July 22, 2014, and later amended on August 19, October 7, 8, and 29, 2014, the General Counsel issued a complaint on October 30, 2015, and an amended complaint on June 29, 2016, against D2 Abatement, Inc., and Premier Environmental Solutions, LLC (the Respondents), alleging that they were alter egos and had violated Section 8(a)(5) and (1) of the National Labor Relations Act. On November 13, 2015, Premier Environmental Solutions, LLC, filed an answer to the complaint.

Subsequently, the Respondents and the Union executed an informal settlement agreement, which was approved by the Regional Director for Region 7 on September 29, 2016. Pursuant to the terms of the settlement agreement, the Respondents agreed, among other things, to (1) reinstate employee Latoya Jackson, (2) recall employees Roger Via, Robert Foster, Janita Williamson, Darryl Ellsberry, Christopher Smith, and Antonio Stevenson, (3) remove references to the discharge of Latoya Jackson and suspensions of Janita Williamson, (4) make employees whole for changes in wages, seniority, and vacation days, (5) remit dues to the Union that were deducted from employees' wages, and (6) post and mail an appropriate notice.

The settlement agreement also contained the following provision:

The Charged Parties agree that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Parties, and after 14 days notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Parties, the Regional Director will reissue the amended complaint and compliance specification previously issued on June 29, 2016 in the instant case(s). Thereafter, the General Counsel may file a motion for default judgment with the Board on the allegations of the complaint. The Charged Parties understand and agree

that the allegations of the aforementioned amended complaint and compliance specification will be deemed admitted and any Answer to such amended complaint and compliance specification will be considered withdrawn. The only issue that may be raised before the Board is whether the Charged Parties defaulted on the terms of this Settlement Agreement. The Board may then, without necessity of trial or any other proceeding, find all allegations of the amended complaint to be true and make findings of fact and conclusions of law consistent with those allegations adverse to the Charged Parties on all issues raised by the pleadings. The Board may then issue an order providing a full remedy for the violations as provided for in the compliance specification. The parties further agree that a U.S. Court of Appeals Judgment may be entered enforcing the Board order ex parte, after service or attempted service upon Charged Parties/Respondents at the last address provided to the General Counsel.

On October 13, 2016, the Compliance Officer for Region 7, on behalf of the General Counsel, sent a compliance package to the Respondents and the Respondents' counsel, by regular mail, containing copies of the Notice to Employees, a Certification of Compliance form to be completed by an official of the Respondents and returned to Region 7, and a detailed letter of the Respondents' obligations under the settlement agreement.

On November 8, 2016, the Regional Director sent a letter to the Respondents, by regular mail, notifying the Respondents that they had not complied with the terms of the settlement agreement, and stating that unless the Respondents provided evidence of compliance with the settlement agreement within 14 days, the complaint would be reissued and a motion for default judgment would be filed with the Board.

On November 29, 2016, the Respondents provided checks, post-dated December 2, 2016, constituting an amount equal to the first 2 monthly installment payments under the settlement agreement. On March 1, 2017, the Respondents provided checks, dated January 13, 2017, constituting an amount equal to a third monthly installment payment. The Region determined, however, that the associated checking account had been closed with a zero balance. No other payments were received by the Region.

Accordingly, pursuant to the terms of the noncompliance provision of the settlement agreement, on June 30, 2017, the Regional Director issued a Consolidated Amended Complaint and Compliance Specification Based on Breach of Affirmative Provisions of Settlement Agreement (reissued complaint) and the General Counsel filed a Motion for Default Judgment with the Board. On July 6,

2017, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Default Judgment

According to the uncontroverted allegations in the motion for default judgment, the Respondents have failed to comply with the terms of the settlement agreement. Consequently, pursuant to the noncompliance provisions of the settlement agreement set forth above, we find that all of the allegations in the reissued complaint are true. Accordingly, we grant the General Counsel's Motion for Default Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, Respondent D2 Abatement, Inc., has been a corporation with an office in Sterling Heights, Michigan, and has operated within customer facilities throughout Michigan and the United States, including the Ford Dearborn Assembly Plant (Ford Plant) in Dearborn, Michigan, and has been engaged in providing environmental recycling services.

At all material times, Respondent Premier Environmental Solutions, LLC, has been a company with an office in Sterling Heights, Michigan, and has operated within customer facilities throughout Michigan and the United States, including the Ford Plant in Dearborn, Michigan, and has been engaged in providing environmental recycling services.

At all material times, Respondent D2 Abatement, Inc., and Respondent Premier Environmental Solutions, LLC, have had substantially identical management, business purposes, operations, equipment, customers, supervision, and ownership.

About February 25, 2014, Respondent Premier Environmental Solutions, LLC, was established by Respondent D2 Abatement, Inc., as a disguised continuation of Respondent D2 Abatement, Inc.

Based on the operations and conduct described above, Respondent D2 Abatement, Inc., and Respondent Premier Environmental Solutions, LLC, are, and have been at all material times, alter egos within the meaning of the Act.

Since about July 24, 2015, Respondent Premier Environmental Solutions, LLC, has been a debtor-in-possession with full authority to continue its operations and to exercise all powers necessary to administer its business.

During the calendar year ending December 31, 2014, Respondent D2 Abatement, Inc., in conducting their operations described above, purchased and received at its Sterling Heights, Michigan, facilities goods valued in excess of \$50,000 directly from points outside the State of Michigan.

During the calendar year ending December 31, 2014, Respondent Premier Environmental Solutions, LLC, in conducting its operations described above, purchased and received at its Sterling Heights, Michigan, facilities goods valued in excess of \$50,000 directly from points outside the State of Michigan.

We find that at all material times, Respondent D2 Abatement, Inc., and Respondent Premier Environmental Solutions, LLC, have each been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

We find that at all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

1. At all material times, President Duane Jones has been a supervisor of the Respondents within the meaning of Section 2(11) of the Act and an agent of the Respondents within the meaning of Section 2(13) of the Act.

2. At all material times, Latonya Kelley has been an agent of the Respondents within the meaning of Section 2(13) of the Act.

3. (a) The following employees of the Respondents (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing that certain type of work hereinafter called "Specialized Services" shall incorporate general industrial plant cleaning, deep cleaning, clean room cleaning, environmental cleaning, slug cleanup, hydro-cleaning, sandblasting, wet and dry cleaning, chemical cleaning, metallizing, power rodding and bucket machining, and such other work that comes under the trade jurisdiction of the Union done by the Employer.

(b) Since about 2003, and at all material times, the Respondents have recognized the Union as the exclusive collective-bargaining representative of the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from April 1, 2014, through March 31, 2018.

(c) At all times since about 2003, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining of the unit.

4. (a) Since about January 23, 2014, the Respondents have deducted union dues and fees from the wages of unit employees who have authorized such deductions, but have failed to remit the deducted sums to the Union.

(b) The Respondents took these actions contrary to the language of the unit employees' authorizations and without the consent of the unit employees or the Union.

5. About July 14, 2014, the Respondents administered a pre-employment drug test to employees working at the Ford Plant.

6. As a result of the Respondents' conduct described above in paragraph 5, on July 14, 2014, the Respondents terminated the employment of Latoya Jackson and suspended employee Janita Williamson.

7. (a) About July 18, 2014, the Respondents laid off their employees working at the Ford Plant.

(b) About August 22, 2014, the Respondents laid off their employees working at the Ford Plant.

8. About July 21, 2014, the Respondents lowered the wages of employees working at the Ford Plant to the starting wages outlined in the collective-bargaining agreement described above in paragraph 3(b), reset the seniority date of employees which resulted in some employees being deemed ineligible for the quarterly bonuses they previously received, and took away employees' accrued vacation hours.

9. About September 19, 2014, the Respondents implemented a new process for employees to follow to be recalled from a layoff.

10. About September 22, 2014, the Respondents failed to recall employees Darryl Ellsberry, Robert Foster, Christopher Smith, Antonio Stevenson, Roger Via, and Janita Williamson.

11. The Respondents engaged in the conduct described above in paragraph 10 as a result of the Respondents' conduct described above in paragraph 9.

12. The subjects set forth above in paragraphs 4 through 10 relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

13 (a) The Respondents engaged in the conduct described above in paragraphs 4 through 6, 7(b), and 8 through 10 without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondents with respect to this conduct and the effects of this conduct.

(b) The Respondents engaged in the conduct described above in paragraph 7(a), without affording the Union a meaningful opportunity to bargain with respect to the effects of this conduct.

14. Since about July 14, 2014, by the conduct described above in paragraphs 4 through 6, and 8 through 10, the Respondents

have failed to honor their collective bargaining agreements with the Union.

CONCLUSION OF LAW

By the conduct described above in paragraphs 6 through 7(a), 8 through 11, 13, and 14, the Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of their employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5) of the Act.

The unfair labor practices of the Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, we shall order them to take certain affirmative action designed to effectuate the policies of the Act. Specifically, we shall order the Respondents to comply with the unmet terms of the settlement agreement approved by the Regional Director for Region 7 on September 29, 2016.

Accordingly, we shall order the Respondents to offer Latoya Jackson immediate and full reinstatement to her former job without prejudice to her seniority or any other rights and privileges she previously enjoyed; recall Roger Via, Robert Foster, Janita Williamson, Darryl Ellsberry, Christopher Smith, and Antonio Stevenson to their former jobs without prejudice to their seniority or any other rights and privileges they previously enjoyed; remove from their files all references to the discharge of Latoya Jackson and suspension of Janita Williamson and notify the employees in writing that this has been done and that the actions will not be used against them in any way.

In addition, we shall order the Respondents to make whole the Union and employees by payment in the amount agreed to in the settlement agreement of \$84,088.08, to be distributed to the Region in monthly installments.¹

In limiting our affirmative remedies to those enumerated above, we note that the General Counsel is empowered under the noncompliance provisions of the settlement agreement to seek a "full remedy for the violations" found. However, in his Motion for Default Judgment, the General Counsel has not sought such additional remedies and we will not, *sua sponte*, include them.²

¹ Although the General Counsel's motion states that the Respondents remitted the initial two monthly payments totaling \$4,671.56, they failed to remit any subsequent installment payments. Accordingly, the Respondents shall remit the full remaining balance.

² See, e.g., *Benchmark Mechanical, Inc.*, 348 NLRB 576 (2006). The General Counsel specifically requested in his motion for default

judgment that the Board order the Respondents to remit the balance of the amount due as well as the remedies sought in the Settlement Agreement. Therefore we construe the General Counsel's motion as seeking enforcement of the unmet provisions of the settlement agreement.

The General Counsel additionally requests a make-whole remedy that includes reasonable consequential damages incurred as a result of the

ORDER

The National Labor Relations Board orders that the Respondents, D2 Abatement, Inc., and its alter ego Premier Environmental Solutions, LLC, Sterling Heights, Michigan, their officers, agents, successors, and assigns, shall take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Latoya Jackson immediate and full reinstatement to her former job without prejudice to her seniority or any other rights and privileges she previously enjoyed; and remove from their files all references to her discharge, and notify her in writing that this has been done and that the discharge will not be used in any way against her.

(b) Remove from their files all references to the suspension of Janita Williamson, and notify her in writing that this has been done and that the suspension will not be used against her in any way.

(c) Recall Roger Via, Robert Foster, Janita Williamson, Darryl Ellsberry, Christopher Smith, and Antonio Stevenson to their former jobs without prejudice to their seniority or any other rights and privileges they previously enjoyed.

(d) Remit to Region 7 the amount set forth in the settlement agreement approved by the Regional Director on September 29, 2016, less any amounts that the Region verifies have already been paid, on behalf of the Union and employees Latoya Jackson, Janita Williamson, Roger Via, Robert Foster, Janita Williamson, Darryl Ellsberry, Christopher Smith, and Antonio Stevenson, in accordance with the settlement agreement.

(e) Post at their facility and the Ford Sterling Axle Plant in Sterling Heights, Michigan, and at the Ford Dearborn Assembly Plant in Dearborn, Michigan, copies of the notice that the parties agreed to post as part of the settlement agreement. The notice shall be posted in the same manner as agreed to in the settlement agreement.

(f) Copy and mail to employees the notice that the parties agreed to copy and mail as part of the settlement agreement. The notice shall be copied and mailed in the same manner as agreed to in the settlement agreement.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondents has taken to comply.

Dated, Washington, D.C. October 15, 2018

Lauren McFerran, Member

Marvin E. Kaplan, Member

William J. Emanuel Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

Respondents' unfair labor practices and that the Respondents be ordered to "expunge from their files and records the results of drug tests unlawfully administered to employees." We deny the General Counsel's

requests because these additional remedies were not included in the settlement agreement.